

ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

In re:

AMENDMENT OF SECTION 73.606(b)
TABLE OF ALLOTMENTS
TV BROADCAST STATIONS
EL DORADO, ARKANSAS

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MM Docket No.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

TO: Chief, Allocations Branch
Policy and Rules Division

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PETITION FOR RULEMAKING

Arkansas Educational Television Commission ("AETC"), by its attorneys and pursuant to the Commission's Rules, hereby requests that the Commission institute a rulemaking proceeding to amend Section 73.606(b) of its Rules to substitute reserved NTSC Channel *52 in lieu of vacant reserved NTSC Channel *30+ at El Dorado, Arkansas.^{1/} This substitution of reserved NTSC channels would serve the public interest by preserving an educational channel at El Dorado that is compatible with the Commission's proposed DTV Table of Allotments and thereby makes possible a first local source of noncommercial educational programming to the area.

AETC proposes the following amendment to Section 73.606(b) of the Commission's Rules:

^{1/} AETC operates the statewide public television network in Arkansas, which consists of noncommercial educational television Stations KAFT-TV, Fayetteville, AK; KEMV-TV, Mt. View, AK; KETG-TV, Arkadelphia, AK; KETS-TV, Little Rock, AK; and KTEJ-TV, Jonesboro, AK.

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<u>Community</u>	<u>Present</u>	<u>Proposed</u>
El Dorado, AR	10-, *30+, 43- and 49-	10-, 43-, 49- and * 52

In support of this petition, AETC submits the following:

A. The Proposed Changes to the Table of TV Allotments Will Serve the Public Interest

The proposed changes to the Table of TV Allotments will serve the public interest and result in a preferential arrangement of allotments.

The proposed substitution will allow activation of a new station in circumstances where, because the existing vacant reserved allotment (Channel *30+) has likely been rendered unusable by the Commission's proposed DTV Table of Allotments, the station could not otherwise be licensed. In August of 1996, the Commission released the *Sixth Further Notice of Proposed Rule Making* in MM Docket No. 87-268 (the "*Sixth Further Notice*"), which included a draft table of digital television ("DTV") allotments for existing TV stations and an extensive discussion of allocation policies and procedures.^{2/} Under the Table of DTV Allotments proposed by the FCC in the *Sixth Further Notice*, Channel *30+ is no longer usable as an NTSC channel given the proximity of proposed DTV Channel 30 at Pine Bluff, Arkansas and other DTV channels proposed for use in the area.

In view of its interest in providing additional educational TV service to the El Dorado area, AETC performed a study of NTSC channels in the El Dorado area that could be utilized

^{2/} The *Sixth Further Notice* provided parties 30 days to file new NTSC applications for vacant allotments. AETC is filing an application for a new noncommercial educational TV Station on Channel *52, El Dorado, Arkansas, in conjunction with this Petition for Rulemaking. We ask that the Commission permit the simultaneous Petition for Rulemaking and application -- AETC is filing the Channel *52 application at this time only to meet the 30-day deadline on new NTSC applications imposed by the *Sixth Further Notice*.

without interference to or from existing NTSC allotments or the proposed DTV allotments.

Channel *52 satisfies these requirements.^{3/} Therefore, AETC proposes substitution of Channel *52 for the Channel *30+ allotment.

The proposed substitution of reserved NTSC channels will also make possible activation of a TV facility that will provide a first noncommercial educational service for El Dorado and its surrounding counties. For example, in AETC's application (filed simultaneously with this Petition), the Grade B contour of the proposed Channel *52 station will encompass a population of 511,918 persons and an area of 33,915 square kilometers. See attached Engineering Statement. Much of this service area is not duplicated by any other noncommercial educational TV station. Without the substitution making possible the activation of a new noncommercial station, these El Dorado area residents will be deprived of this educational TV service from a channel long-reserved for their benefit.

B. Channel *52 at El Dorado, Arkansas, Should Continue to Be Reserved for Noncommercial, Educational Use.

The proposed change in allotments is consistent with long-standing Commission policy favoring development of noncommercial educational telecommunications services. For example, Commission policy clearly mandates the preservation of educational channels for their intended use. See, e.g., Television Channel Assignments, 60 RR2d 784 (1986). Absent an alternative channel, the Commission has been particularly reluctant to delete or reallocate a reserved channel. Id. Even absent the present or planned use of the reserved channel, the Commission has maintained its reluctance towards channel deletion. Ogden, Utah, 42 Fed. Reg.

^{3/} See attached Engineering Statement.

40302 (1977). In assigning television channels on a reserved basis, the Commission intended for the channels to serve not only the present needs for noncommercial educational service, but future demands for the service as well. See Mansfield and Marion, Ohio, 48 RR2d 1003 (1980). Commission policy clearly favors the activation of long-vacant channels. See e.g., Montrose and Scranton, Pennsylvania, 68 RR2d 702 (1990).

The purpose of this petition is to substitute a channel, for which AETC intends to apply (and, indeed, has now applied), so that AETC may bring new noncommercial educational service to the El Dorado and South Central Arkansas areas. The South Central Arkansas region is presently unserved by off-the-air public television service from AETC, although the area does receive some cable coverage. Thus, the channel substitution will offer significant new noncommercial educational service to the region and benefit the public interest.

CONCLUSION

For all of these reasons, AETC requests that the Commission institute a rulemaking proceeding to amend Section 73.606(b) of its Rules to substitute Channel *52 at El Dorado, Arkansas, for vacant and unusable Channel *30+ at El Dorado, Arkansas, and to continue its reservation for noncommercial educational use.

Respectfully submitted,

ARKANSAS EDUCATIONAL TELEVISION
COMMISSION

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Attorneys for Petitioner

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September 20, 1996

ARKANSAS EDUCATIONAL TELEVISION COMMISSION
350 South Donaghey
Conway, Arkansas 72032

DECLARATION UNDER PENALTY OF PERJURY

I, Susan Howarth, Executive Director of the Arkansas Educational Television Commission, declare under penalty of perjury that the foregoing facts set forth in this Petition for Rulemaking to amend Section 73.606(b) of the Commission's Rules are true and correct to the best of my knowledge and belief.

As stated in the Petition, the petitioner is simultaneously filing an application for the channel proposed to be substituted, which should be viewed as evidence of its good faith intention to utilize the proposed channel.

By: Susan Howarth

Title: Executive Director

Date: September 18, 1996

**ENGINEERING STATEMENT
RE PETITION FOR RULE MAKING TO
SUBSTITUTE EDUCATIONAL
TV CHANNEL 52 FOR CHANNEL 30 AT
EL DORADO, ARKANSAS**

SEPTEMBER 1996

**COHEN, DIPPELL AND EVERIST, P.C.
CONSULTING ENGINEERS
RADIO AND TELEVISION
WASHINGTON, D.C.**

COHEN, DIPPELL AND EVERIST, P. C.

City of Washington)
) ss
District of Columbia)

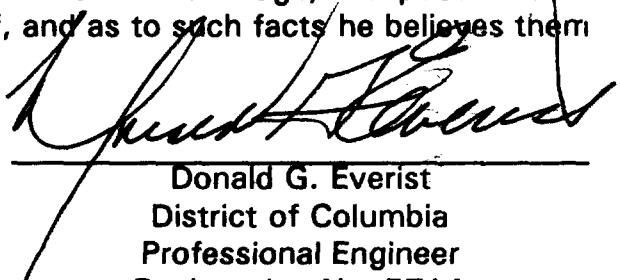
Donald G. Everist, being duly sworn upon his oath, deposes and states that:

He is a graduate electrical engineer, a Registered Professional Engineer in the District of Columbia, and is President of Cohen, Dippell and Everist, P.C., Consulting Engineers, Radio - Television, with offices at 1300 L Street, N.W., Suite 1100, Washington, D.C. 20005;

That his qualifications are a matter of record in the Federal Communications Commission;

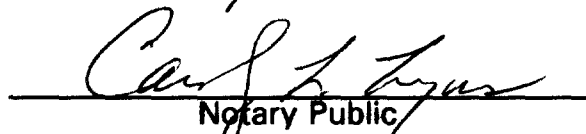
That the attached engineering report was prepared by him or under his supervision and direction and

That the facts stated herein are true of his own knowledge, except such facts as are stated to be on information and belief, and as to such facts he believes them to be true.



Donald G. Everist
District of Columbia
Professional Engineer
Registration No. 5714

Subscribed and sworn to before me this 18th day of September, 1996.



Notary Public

My Commission Expires: 2/28/98

This engineering statement has been prepared on behalf of Arkansas Educational Television Commission in support of its petition for a rule making to substitute reserved Channel *52 (z) (698-704 MHz) for reserved Channel *30 (+) (566-572 MHz) at El Dorado, Arkansas, by amending Section 73.606 (Table of Allotments) of the Commission's Rules. The requested substitution of TV channels will permit activation an NTSC-TV operation for El Dorado, Arkansas, which would not be in conflict with the FCC's proposed DTV Table of Allotments contained in the Commission's *Sixth Further Notice of Proposed Rule Making* in MM Docket 87-268.

The proposed changes would be in full compliance of the Commission's minimum distance rules.

The following amendment of the TV Table of Allotments is requested.

<u>Community</u>	<u>TV Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
El Dorado, AR	30* +	52*

The applicant requests that the substituted Channel 52 continue to be reserved for non-commercial educational use by Arkansas Educational Television Commission which has concurrently filed an application to specify operation on the new channel.

A TV allocation study indicates that the channel can be allotted according to the Commission's minimum distance separation rules (Sections 73.610 and 73.698) by the substitution of Channel 52 (z)* for Channel 30 (+) at El Dorado, Arkansas.

The attached map (Exhibit E-1) shows the minimum distance separation arcs from the pertinent stations and allotments for Channel 52 operation at El Dorado, Arkansas, and the area where an antenna site can be located.

The proposed Arkansas Educational Television Commission has selected as a reference antenna site the existing KTVE(TV) tower site as it meets the minimum distance separation requirements to all the existing and proposed TV stations and allotments. The geographic coordinates of the Channel 52 reference site (proposed antenna site) are as follows:

North Latitude: 33° 04' 41"

West Longitude: 92° 13' 41"

There is no other Channel 52 TV operation or allotment within 300 km of the proposed Channel 52 reference site at El Dorado, Arkansas. The attached Table I shows the actual and required distances to the pertinent existing TV stations and allotments from the Channel 52 reference site at El Dorado, Arkansas. All distances were computed according to Section 73.611 of the Commission's Rules using the authorized or reference geographic coordinates of the TV assignments or allotments.

Under MM Docket 87-268, the Commission ordered a temporary freeze on construction permit applications for TV allotments now vacant within certain metropolitan areas. It is believed the freeze is, however, not applicable to the proposed channel substitutions because the Arkansas Educational Television

Commission proposal would not impact the FCC's inquiry on the development and uses of advanced TV systems in MM Docket No. 87-268.

It has been demonstrated above that UHF-TV Channel *52 (z) (698-704 MHz) can be substituted for UHF Channel *30 (+) in El Dorado, Arkansas, according to the minimum distance separation requirements of Sections 73.610 and 73.698 and the City Grade coverage requirement of Section 73.685 of the Commission's Rules. Therefore, Arkansas Educational Television Commission requests the Commission to amend Section 73.606 of its Rules to allot UHF-TV Channel *52 (z) and delete Channel *30 (+) in El Dorado, Arkansas.

COHEN, DIPPELL AND EVERIST, P. C.

TABLE I
TV ALLOCATION SITUATION
FOR THE PROPOSED CHANNEL 52 OPERATION AT
EL DORADO, ARKANSAS
SEPTEMBER 1996

<u>Channel</u>	<u>Call</u>	<u>City/State</u>	<u>Geographic Coordinates</u>	<u>Distance</u>	
				<u>Actual km</u>	<u>Required km</u>
52 (z)	Prop.	El Dorado, AR	33-04-41 92-13-41	--	--
37	None within 300 km			--	119.9
38	KASN	Pine Bluff, AR	34-26-31 92-13-03	151.3	95.7
44	Allot.	Greenville, MS	33-24-24 91-03-36	114.8	31.4
45	KSHV	Shreveport, LA	32-38-17 93-52-45	162.1	95.7
47	None within 300 km		--	--	31.4
48	WNTZ	Natchez, MS	31-40-08 91-41-30	164.2	31.4
49	Allot.	El Dorado, AR	33-12-24 92-40-00	164.2	31.4
50	None within 300 km		--	--	31.4
51	NEW	Jackson, MS	32-17-44 90-14-44	205.2	87.7
52	None within 300 km		--	--	280.8
53	None within 300 km		--	--	87.7
54	Allot.	Longview, TX	32-29-30 94-44-00	243.5	31.4
55	None within 300 km		--	--	31.4
56	None within 200 km		--	--	31.4
57	None within 200 km		--	--	31.4
59	None within 200 km		--	--	95.7
60	None within 200 km		--	--	31.4
66	None within 200 km		--	--	95.7
67	None within 300 km		--	--	119.9

